IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 821 OF 2000

Babu Ikya Pawar, aged 44 years,]
presently lodged at Yerawada Central Prison,]
Pune – 411 006 – As a Convict Prisoner]
No.C/11559] .. Appellant.

Versus

The State of Maharashtra,]
Wakhal Police Station, C.K.I.-18/99] ..Respondent

Mr. D.G. Khamkar, Advocate appointed for the appellant/accused.

Mrs. P.H. Kantharia, A.P.P. for the respondent-State.

CORAM: V.G. PALSHIKAR &
ANOOP V. MOHTA, JJ.

DATED: 23RD SEPTEMBER, 2004.

ORAL JUDGMENT: *[Per Anoop V. Mohta, J.]*

1. This is an Appeal against the order of conviction under Sections 302, 307 and 325 of the Indian Penal Code. By the impugned judgment, the learned Sessions Judge, Raigad, Alibag, held that one Tanaji @ Tanya and Mati met with homicidal death. He further held that accused intentionally caused the death of

Tanya, as well as, Mati. It has been further proved that the appellant attempted to commit murder of Jaibai and caused grievous hurt to complainant Chandrakant. Therefore, the accused was convicted and sentenced to suffer rigorous imprisonment for life for the offence under Section 302 IPC. He was also sentenced to suffer rigorous imprisonment for seven years for the offence committed under Section 307 of the IPC and he was further convicted and sentenced to suffer rigorous imprisonment for two years for the offence committed under Section 325 IPC read with the order of penalty and related default clauses.

2. We have heard the learned Advocate appearing for the appellant and the A.P.P. appearing for the State. After re-appreciating and re-weighing the evidence, as well as, the material placed on the record, including the point-wise reasoning given by the learned Additional Sessions Judge, we are satisfied that the appellant has committed the offence under Section 307 and 325 by attempting to commit murder of Jaibai and caused grievous hurt to the complainant Chandrakant. We are also confirming that Tanaji @ Tanya and Mati met with homicidal death as held by the learned Sessions Judge. Therefore, we are not interfering with the finding so far as the above two issues are concerned. However, on the same evidence and testimony, including the submissions made by the parties, based on the Memo of Appeal, we are of the view that there is no

case made out, beyond reasonable doubt, that the appellant has committed the offence under Section 302 of IPC and intentionally caused the death of Tanaji @ Tanya and Mati.

3. PW2 – Jaibai Babu Pawar is the wife of the accused-appellant. Deceased Tanaji and his wife Mati were working as labourers at village Ravali on the land of PW1 - Chandrakant Manve. On 23rd February, 1999, at about 7.15 p.m., as the wife Jaibai did not prepare the food immediately, as demanded, the appellant, in anger, inflicted sickle blow on the left side of Jaibai' sneck and caused the injuries. PW1 – Chandrakant, who was present on the spot, therefore, intervened to rescue Jaibai, but the appellant assaulted Chandrakant with the same sickle. That caused him injury on the nose. As Chandrakant was trying to run away from the spot, the appellant accused chased him for some distance. The appellant came back to the spot. It is a case of the prosecution that as the appellant came back to the spot, Chandrakant heard shouts of Tanaji and Mati. He was frightened and, therefore, he went to his house. He narrated the incident to his wife. He came to Wakhal Police Station and accordingly, entry was made in the Station Diary. The said Constable, along with Chandrakant and his friend Sadhu Shinde came back to the spot. They found injured Jaibai and the dead bodies of Tanaji and Mati. The injured Chandrakant and Jaibai were taken to the Wakhal Police Station. The complaint of Chandrakant was

accordingly recorded. He was sent for medical examination. As the condition of Jaibai was serious, after initial treatment, she was referred to Sion Hospital, Mumbai. The panchanama of the spot of the incident (Exhibit-27) was drawn by PW8 – PSI Suresh Dinkar Jadhav. The accused was arrested. The statement of the witnesses were recorded. The bodies were sent for post mortem. The Medical Officer confirmed the cause of death due to the injuries to the skull and forehead and those injuries were sufficient to cause the death of Tanaji. The cause of death of Mati, as reported, was due to injury to the jugular vein. PW-5 Kishore, the Medical Officer attached to the P.H.C., Chikhali, endorsed that the injuries were possible by the article like a sickle. The injuries on the person of Jaibai, as well as, the complainant Chandrakant did not prove to be fatal. The instrument i.e. the sickle was seized and all other articles were sent for chemical analysis. The charges were framed against the accused. The accused pleaded “not guilty”. His defence was of total denial. The accused has not produced any evidence in his defence. The prosecution has examined, in all, 9 witnesses. There is no eye witness to the incident insofar as the deceased Tanaji and his wife Mati are concerned.

4. We are confirming the reasoning and the finding given by the learned Additional Sessions Judge, based on the evidence on the record that the death of Tanaji and Mati was homicidal. There is no much challenge to this reasoning

even by the appellant. The challenge is that there is no evidence, direct or indirect, to connect the appellant, beyond reasonable doubt, that he had committed or caused the death of Tanaji, as well as, Mati. The two injured witnesses Jaibai and the complainant Chandrakant, read with the other corroborations of the Spot Panchanama and the recovery of the sickle, the injury caused and the nature of injury on the person of Jaibai and Chandrakant, have proved the series of events to connect the appellant-accused with the crime under Section 307 and 325 IPC. Therefore, we are confirming this reasoning, as well as, conviction and imposition of sentence so far as this part is concerned.

5. These two witnesses, however, nowhere supports the prosecution case that the appellant had committed the double murder in question. There is no evidence about the cause of death of these two deceased. PW4 – Rajan Sampat Kate, the Police Constable who reached the spot after the complaint by Chandrakant PW1 did nothing after seeing the two dead bodies. No justification is placed on the record by the prosecution.

6. We have gone through the testimony of PW1 Chandrakant, the complainant. In his evidence, he corroborates the prosecution case of attacking Jaibai, PW2, with the sickle on the neck. He also supports the assault by the accused on his person by the same sickle. He further deposed that the accused

chased him for some distance. The accused returned back and at that time, he heard the noise of *"Maylo re Maylo"* of Mati and Tanya. He, however, instead of rushing to the spot, went to his house. There is nothing in his evidence to support the prosecution case that he witnessed the assault by the accused on Tanya and Mati. After returning along with the Police, he saw the dead bodies lying there. After seeing that, he became unconscious. Thereafter, in the Police Station, he narrated the complaint. In the cross-examination he has stated that he saw the sickle in the Court, after the incident, for the first time. He also admits that he is the owner of the said sickle. The friend of Chandrakant Sadhu was not examined. Therefore, this testimony of Chandrakant only supports the case of attack and/or assault by the appellant on Jaibai, as well as, on him. This evidence nowhere supports the case of the prosecution about the assault by the accused on Tanaji and Mati.

7. Another important and injured witness is PW2 Jaibai the wife of the accused-appellant. She deposed that after the quarrel about the preparation of food, accused assaulted her with a sickle on the left side of her neck and also on her chin. PW1 Chandrakant intervened. Chandrakant started running and she sat there as blood was oozing from her neck. Because of the said injury her saree was stained with blood. She became unconscious. She gained consciousness at about 10.00 p.m. She further deposed that she had not

personally seen the accused assaulting Chandrakant. Therefore, in both their testimonies, there is no reference made about the assault by the appellant on Tanaji and his wife Mati. On the contrary, PW2 Jaibai deposed that she did not see the accused assaulting Jaibai. She further deposed that the appellant had assaulted Chandrakant on his neck. This prosecution witness was not declared hostile. There is not even a suggestion from the prosecution's side about the said two dead bodies. PW2 Jaibai nowhere corroborates the case of PW1 that he heard the shouts of the two deceased persons saying *"Maylo-re-Maylo"*. This witness also, therefore, nowhere supports the prosecution case insofar as the double murder by the appellant. Therefore, these two basic witnesses of the prosecution cannot be relied upon to convict the appellant for the said offence of double murder. There is no other corroborative or circumstantial evidence to link the accused with the murder.

8. PW3 – Police Head Constable who went to the spot and found two dead bodies, asked Constable Patil to wait there and returned back to the Police Station along with the injured Chandrakant and Jaibai. As noted, there is no whisper in the evidence of PW2 – Jai Babu Pawar about this. There is nothing mentioned in the testimony of this witness about making any entry in the Station Diary to that effect inspite of visiting the spot and noticing the two dead bodies.

He admits that he had not even seized the saree, which was on the person of Jaibai. He did not even record the complaint of Chandrakant at the relevant time. The complaint was recorded by some other person at about 2.00 a.m. on 24/2/1999. According to us, this witness also nowhere supports the prosecution case so far as the double murder in question qua the appellant. The other witness PW4 proved the case of sending the articles to the Chemical Analyzer, Mumbai. PW5 Dr. Kishore Anant Patil proved the injuries which resulted into death of these two persons and the injuries on the person of PW1 and 2. He also deposed that the injuries on the person of Tanaji, as well as, Mati were possible because of such article i.e. Sickle. PW6 – Gajanan Dharma Patil is a Panch witness of the recovery of sickle at the instance of the accused. This article in question was recovered from the forest, which he further deposed that was accessible to all. He further deposed that no blood stains were found on the handle of the sickle. While preparing the panchanama, the sickle was not wrapped in a paper. No seal or signatures of the Panch were affixed on the sickle. PW7 had issued the certificate of injuries to Chandrakant and Jaibai. He also deposed that the injury noticed on the person of Jaibai were on the vital portion of the body, but for the timely treatment she was saved. PW8-PSI Suresh Dinkar Jadhav of Wakhal Police Station deposed that when he went to the spot of the incident and took the search of the accused, he was not traceable. However, the Inquest Panchanama (Exhibit-27) was drawn of the dead bodies of

Tanaji and Mati on the next morning. The bodies were referred for post mortem. Samples of blood stained earth and plain earth was collected. On 24th February, 1999, the accused was arrested in village Pabal. On 25th February, 1999, the instrument was recovered. He further deposed that Chandrakant and Jaibai were referred to Judicial Magistrate for recording their statement under Section 164 of the Criminal Procedure Code and they were produced accordingly. He further deposed that in the Chemical Analyzer' sReport (Exhibit-35), there is a mention about the blood stains on the handle of the sickle. However, in the Panchanama of seizure of the sickle, no such fact was mentioned. He was unable to give any explanation for the same. This witness also nowhere refers to the prosecution case or connected evidence and even remotely suggests that the appellant had committed the double murder in question. The evidence of all these witnesses, according to us, is not sufficient to convict the appellant for the double murder in question.

9. In view of this, we are of the view that there is no supporting evidence, except the complaint of PW1 - Chandrakant that he had heard the shouts of Tanaji and Mati. Even PW2 – Jaibai who corroborates PW1 so far as the other part is concerned to some extent, nowhere supports the case of the prosecution or the complainant about the assault by the appellant on these two persons viz. Tanaji and Mati. There is no corroborative evidence to link the

accused with this case of the prosecution of double murder, even though the homicidal death of Tanaji and Mati is proved. In our view, therefore, the reasoning and conviction against the appellant under Section 302 is unsustainable.

10. Therefore, we are allowing this Appeal partly and setting aside the order of conviction and sentence under Section 302 of the IPC. The appellant is acquitted so far as the conviction under Section 302 of the IPC is concerned. However, we are also of the view that the appellant has committed the offence under Section 307 read with Section 325 of the IPC. Therefore, the impugned judgment and order is maintained in respect of Section 307 and 325. However, in view of the above reasoning, the sentence of rigorous imprisonment is restricted to 5 years, instead of 7 years. The appellant-accused be set at liberty, if he has already undergone the period of 5 years and, if otherwise not required for any other offence.

11. In view of this, Appeal partly allowed to the extent referred above.

12. We quantify the fees to be paid to the Advocate appointed for the appellant at Rs. 750/- for this Appeal.

[V.G. PALSHIKAR, J.]

[ANOOP V. MOHTA, J.]